Filed 8/13/19 In re N.R. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re N.R., a Person Coming Under the Juvenile Court Law.	
DEL NORTE COUNTY DEPARTMENT OF HEALTH & HUMAN SERVICES, Plaintiff and Respondent, v. A.R. et al., Defendants and Appellants.	A156099 (Del Norte County Super. Ct. No. JVSQ17-6067)

N.R. (father) and A.R. (mother), the parents of two-year-old N.R., appeal from a juvenile court order terminating their parental rights under Welfare and Institutions Code section 366.26.[1] Father claims the Del Norte County Department of Health & Human Services (Department) failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA). Mother claims the juvenile court erred by (1) denying her request for additional time to complete her case plan and (2) terminating parental rights before her mother, P.B. (grandmother), could be assessed for placement. We reject mother's claims but conditionally reverse the order terminating parental rights and remand to ensure compliance with ICWA-related requirements.

[1] All further statutory references are to the Welfare and Institutions Code unless otherwise noted.

I.
FACTUAL AND PROCEDURAL BACKGROUND

Some of the following discussion is drawn from our prior opinion denying mother's petition for extraordinary writ review of the juvenile court's order setting a selection-and-implementation hearing. (*A.R. v. Superior Court* (Oct. 29, 2018, A154959) [nonpub. opn.].)

In March 2017, N.R. was born prematurely and tested positive for THC and morphine. That May, mother brought him to the emergency room with a skull fracture, stating that she had fallen asleep and accidentally dropped him. She "admitted to using . . . [m]orphine the night of the injury" and to waiting until the next day to take the baby to the hospital because she was afraid that the Department would get involved. At the time, father was in jail due to domestic violence against mother.

The Department filed a petition seeking juvenile court jurisdiction over N.R. under section 300, subdivisions (a) (serious physical harm), (b) (failure to protect), and (g) (no provision for support) based on his injury while in mother's care, mother's substance abuse and "unmet mental health needs," domestic violence between the parents, and father's incarceration. The juvenile court sustained allegations under section 300, subdivisions (a) and (b), adjudged N.R. a dependent child, and ordered that the parents receive reunification services. N.R. remained in the care of the same foster parents with whom he was placed after he left the hospital at nine weeks old.

At the January 2018 six-month review hearing, the juvenile court found that mother had not been provided with reasonable reunification services. It was undisputed that she had "some underlying mental issue," such as a learning disability, and the court found that the case plan did not adequately address that issue. The court ordered that both parents receive additional services. Six months passed, and in July 2018, at the twelve-month status review hearing, the court terminated both parents' services. The court also scheduled a selection-and-implementation hearing under section 366.26.

The November 2018 section 366.26 report recommended adoption as N.R.'s permanent plan. The report included an adoption assessment by the California Department of Social Services (CDSS) indicating that grandmother, an Oregon resident, was in the process of being assessed as an adoptive parent. At the November 5 hearing, the juvenile court granted the Department a continuance to allow grandmother's assessment to be completed. Then, after holding an evidentiary hearing, the court denied mother's section 388 petition seeking additional reunification services.

By the time of the rescheduled section 366.26 hearing on December 10, 2018, grandmother's assessment was still pending, and according to the Department this meant she was "not an option for placement." After hearing testimony about the delay, the juvenile court determined it was appropriate to postpone its consideration of the issue for 90 days so that Oregon could complete its assessment.[2] Mother unsuccessfully requested that the section 366.26 hearing itself also be continued to allow Oregon to act, and the court ordered adoption as N.R.'s permanent plan and terminated parental rights.

[2] Grandmother's appeal from the juvenile court's subsequent order that N.R. remain in the care of his foster family is currently pending in this division. (*In re N.R.*, A157046.)

II.
DISCUSSION

A. The Order Terminating Parental Rights Must Be Conditionally Reversed Due to Noncompliance with ICWA and Related State Standards.

Father claims that the Department failed to comply with ICWA notice requirements because it neglected to contact all of the appropriate tribes.[3] We agree.

1. Additional facts.

The May 2017 detention report indicated that the maternal grandfather reported "they have Cherokee heritage" and father and the paternal grandmother reported "they have Cherokee, Chiricahua, and Apache heritage." On May 9, the same day as the detention hearing, father filed an ICWA-020 form, "Parental Notification of Indian Status," on which he checked the box indicating he might have Indian ancestry. Next to the box he wrote, apparently referring to N.R.'s paternal grandmother, "Unknown: Mother has information." Mother also filed an ICWA-020 form on which she checked a box indicating that she might have Indian ancestry, specifying "Apache, Cherokee, Chiricahua."

At the detention hearing, the juvenile court directed father to fill out an ICWA-020 form. After the court realized father had already done so, the following exchange occurred:

> "THE COURT: It appears you may have Native American ancestry with Apache, Chickasaw[,] and Com[]anche; is that correct?
>
> "[FATHER]: Yes, Your Honor.
>
> "THE COURT: All right, do you know what particular tribe? I know[] there are many different tribes.
>
> "[FATHER]: My mother would have more information on that. I've lived in Northern California my whole life. And her tribe is from Arkansas. So I'm not too sure on the

[3] Mother joins this claim but does make any separate arguments based on her own heritage.

answer to that."

Our record does not reflect why the juvenile court thought father might have Chickasaw or Comanche ancestry, as father did *not* list these tribes on his ICWA-020 form, and the record does not show that any of N.R.'s other relatives reported such ancestry either.

Two weeks later, the Department filed an ICWA-030 form, "Notice of Child Custody Proceeding for Indian Child," stating that N.R. was or might be eligible for membership in the Cherokee or Chiricahua tribes. The Department sent ICWA notices to the Cherokee Nation, the Eastern Band of Cherokee Indians, the United Keetoowah Band of Cherokee Indians, and the Fort Sill Apache Tribe of Oklahoma, as well as the Secretary of the Interior and the Sacramento area director of the Bureau of Indian Affairs (BIA).

By the time the disposition hearing was held in late July 2017, the Department had received responses from the Eastern Band of Cherokee Indians and the Fort Sill Apache Tribe, both of which indicated that N.R. was ineligible for enrollment. In its letter, the Fort Sill Apache Tribe, whose letterhead identifies it as the "Fort Sill–Chiricahua–Warm Spring Apache Tribe," stated it is not the only federally recognized Apache tribe and provided contact numbers for seven other Apache tribes. At the hearing, the Department's counsel observed that "[t]he tribes were all noticed more than 60 days ago[,] . . . [s]o we're fine to proceed even without the [other] letters." The juvenile court then found that N.R. "may be an Indian child" and that "notice of the hearing and of the right of the tribe to intervene was provided as required by law."

The Department later received negative responses from the Cherokee Nation and the United Keetoowah Band of Cherokee Indians, and the Department's November 2018 section 366.26 report stated that ICWA did not apply. At the section 366.26 hearing the following month, the Department's counsel confirmed in response to the juvenile court's question that the case did "not involve an Indian child."

2. Discussion.

We start by discussing our standard of review and the applicable law. We review a juvenile court's determination that ICWA does not apply for substantial evidence, which requires us to review "factual findings in the light most favorable to the . . . order" and to " 'indulge in all legitimate and reasonable inferences to uphold [it].' " (*In re H.B.* (2008) 161 Cal.App.4th 115, 119–120.) The failure to comply with ICWA's notice requirements "may be deemed harmless error when, even if proper notice had been given, the child would not have been found to be an Indian child." (*In re D.N.* (2013) 218 Cal.App.4th 1246, 1251.) In addition, "any failure to comply with a higher state standard, above and beyond what . . . ICWA itself requires, must be held harmless unless the appellant can show a reasonable probability that he or she would have enjoyed a more favorable result in the absence of the error." (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1162.)

An "Indian child" is defined as "any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." (25 U.S.C. § 1903(4).) The purpose of ICWA is "to protect the best interests of Indian children and to promote the stability and security of Indian tribes." (25 U.S.C. § 1902.) "ICWA presumes it is in the best interests of the child to retain tribal ties and cultural heritage and in the interest of the tribe to preserve its future generations, a most important resource." (*In re Desiree F.* (2000) 83 Cal.App.4th 460, 469.) To further these goals, tribes may take jurisdiction over or intervene in state dependency proceedings. (25 U.S.C. § 1911(a) & (c).)

A " 'tribe's right to assert jurisdiction over [a] proceeding or to intervene in it is meaningless if the tribe has no notice that the action is pending.' " (*In re Isaiah W.* (2016) 1 Cal.5th 1, 13–14.) ICWA therefore requires notice "where the [juvenile] court knows or has reason to know that an Indian child is involved." (25 U.S.C. § 1912(a).) In addition, ICWA requires an agency "to notify the BIA of the proceedings . . . if the juvenile court knows or has reason to know the child may be an Indian child but the identity of the child's tribe cannot be determined." (*In re N.G.* (2018) 27 Cal.App.5th 474, 480.) A court cannot determine that ICWA is inapplicable "until (1) 'proper and

adequate' ICWA notice has been given, and (2) neither a tribe nor the BIA has provided a determinative response to the notice within 60 days of receiving the notice." (*Ibid.*; former § 224.3, subd. (e)(3).)

At all relevant times, former sections 224.2 and 224.3 established the state requirements for ICWA notice.[4] The statutory law identified "the circumstances that may provide reason to know the child is an Indian child [to] include, without limitation, when a member of the child's extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child's parents, grandparents[,] or great-grandparents are or were a member of a tribe." (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 650 (*Breanna S.*); former § 224.3, subd. (b).) Notice had to be sent to "all tribes of which the child may be a member or citizen or eligible for membership," unless and until the juvenile court determined the child's particular tribe. (Former § 224.2, subd. (a)(3).) An "Indian tribe" is defined as "any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary [of the Interior] because of their status as Indians." (25 U.S.C. § 1903(8).)

The Department argues that, even though it did in fact provide notice to some tribes, father's and mother's claims of Indian ancestry were too "vague and speculative" to trigger ICWA's notice requirements in the first place. (See *In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1467–1468.) We tend to agree with the Department that a duty to send notices to the Chickasaw and Comanche tribes was not triggered. The only indication father had such ancestry was his affirmative response to the juvenile court's question at the detention hearing, and we do not know what, if any, information prompted that question. In other words, it is hardly clear that father actually intended to claim ancestry in either of these tribes.

[4] Effective January 1, 2019, these two statutes were repealed and replaced as part of an effort to conform state law to federal regulations. (Stats. 2018, ch. 833, §§ 4–7; see Assem. Floor Analysis of Sen. Amends. to Assem. Bill No. 3176 (2017–2018 Reg. Sess.) as amended Aug. 22, 2018, p. 1.) We express no opinion on whether the Department's actions would have sufficed under the new law.

This issue may be cleared up on remand, however, because we conclude that reversal is independently required based on the Department's failure to provide adequate notice in response to father's claim of possible Apache ancestry. The Department argues that it did not have a duty "to notice all tribes that [f]ather casually named," as he "did not provide any details as to why he believed he had . . . ancestry [in those groups] . . . . He did not state that he was an enrolled member of any tribe, that any member of his family was an enrolled member of a tribe, [or] that he or any of his family was eligible for membership in any tribe . . . . He simply informed the court that his mother . . . would have more information." The Department attempts to analogize this case to *Hunter W.*, which concluded that the minor's mother had provided insufficient information to give the juvenile court reason to know the minor was an Indian child. (*In re Hunter W.*, *supra*, 200 Cal.App.4th at pp. 1467–1468.) In that case, however, the mother reported only that "she [might] have Indian ancestry through her father . . . and her paternal grandmother." (*Id.* at p. 1467.) Here, in contrast, the detention report reflects that both father and the paternal grandmother reported "they have Cherokee, Chiricahua, and Apache heritage." Numerous courts have found that such information triggered ICWA notice requirements, and the Department fails to convince us otherwise. (E.g., *In re D.C.* (2015) 243 Cal.App.4th 41, 62 [adoptive father reported ancestry in Cherokee Nation and "an unspecified Apache tribe"]; *In re Kadence P.* (2015) 241 Cal.App.4th 1376, 1387–1388 [maternal grandmother's report of Blackfeet ancestry through her grandfather "made that claim more than simply family lore"]; *In re B.H.* (2015) 241 Cal.App.4th 603, 606–607 [father reported "Cherokee" ancestry through paternal grandfather].)

Moreover, even if father provided insufficient information to trigger ICWA's notice requirements, that information was certainly enough to require further inquiry. Although the Department faults father for not providing adequate information, "it was the social worker's duty to seek out [additional] information, not the obligation of family members to volunteer it." (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 652.)

Having determined that the Department had a duty to provide notice based on father's claim of Apache ancestry, we also conclude that sending notice to the Fort Sill

Apache Tribe was insufficient to comply with that duty. Where, as here, a family member does not identify a particular tribe within a larger group, "the language of [former section 224.2,] subdivision (a)(3) must be construed as requiring notice to *all* federally recognized tribes within the general umbrella identified"; notice to the BIA alone is insufficient. (*In re Alice M.* (2008) 161 Cal.App.4th 1189, 1202; *In re J.T.* (2007) 154 Cal.App.4th 986, 993; see *In re O.C.* (2016) 5 Cal.App.5th 1173, 1180, 1188.) Under this authority, the Department was required to provide notice to all eight federally recognized Apache tribes. (See 84 Fed. Reg. 1200–1205 (Feb. 1, 2019).)

The Department argues that it was not required to provide notice to the other seven Apache tribes "because the claim of Apache heritage was linked with the Chiricahua, since the paternal grandmother specifically identified that [the family] may have Chiricahua ancestry." Although the Department does not explain the link between these two groups, we agree with father that the Fourth District Court of Appeal's decision in *In re Louis S.* (2004) 117 Cal.App.4th 622 (*Louis S.*) casts some light on the issue. In *Louis S.*, the mother's family disclosed eligibility for membership "in the Chiricahua Tribe, a branch of the Apache tribe." (*Id.* at p. 627.) Then, as now, the Chiricahua Tribe was not a federally recognized tribe (see 84 Fed. Reg. 1200–1205 (Feb. 1, 2019)), and the social worker learned from the San Carlos Apache Tribe that "members of the Chiricahua Tribe had blended with [it]." (*Louis S.*, at p. 632.) Notice was sent only to the San Carlos Apache Tribe, and on appeal the mother claimed the other seven federally recognized Apache tribes should have also received notice. (*Ibid.*)

Although *Louis S.* concluded that reversal was required based on separate ICWA deficiencies, to provide guidance on remand it addressed the mother's claim that the agency should have sent notice to the other Apache tribes. (*In re Louis S.*, *supra*, 117 Cal.App.4th at pp. 631–632.) The Court of Appeal determined that because "the social worker did not represent that the San Carlos Apache Tribe absorbed *all* members of the Chiricahua Tribe," and because there were two other Apache tribes located "in close proximity," the agency "should have determined whether any members of the Chiricahua Tribe were absorbed into [the other two nearby tribes]" or whether the San

Carlos Apache Tribe had indeed absorbed all of them. (*Id.* at p. 632, italics added.) The results of that further investigation would determine which other Apache tribes, if any, needed to be noticed. (*Ibid.*)

Here, there is even less evidence to demonstrate what the relationship is between the Chiricahua Tribe and the various Apache tribes. The Fort Sill Apache Tribe's letterhead refers to "Chiricahua," but similar to *Louis S.*, there is no evidence establishing that all members of the Chiricahua Tribe were absorbed into the Fort Sill Apache Tribe. Indeed, *Louis S.* suggests this is not the case. Without more, the Department was not entitled to rely on the claim of Chiricahua ancestry to limit its duty to provide notice to all federally recognized Apache tribes.

Nor can we conclude that the error was harmless. Because we hold that the Department violated the state standards for notice, we must determine whether father "can show a reasonable probability that he . . . would have enjoyed a more favorable result in the absence of the error." (*In re S.B.*, *supra*, 130 Cal.App.4th at p. 1162.) The Department makes the conclusory assertion that father has failed to show such a reasonable probability, but we are unconvinced. We have no basis on which to conclude that the result would have been the same had notice been sent to the other Apache tribes, especially since N.R. reportedly had Apache heritage on both sides of his family. "[T]he Indian tribe, not the juvenile court or the court of appeal, is the sole entity authorized to determine whether a child who may be an Indian child is actually a member or eligible for membership in the tribe." (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 654.)

Finally, although father does not seek reversal on the basis of the Department's or juvenile court's failure to comply with the duty of inquiry, we have serious concerns about the adequacy of the investigation into N.R.'s Indian heritage. The ICWA-030 form contains scant information about N.R.'s relatives. For example, the form does not contain any information about N.R.'s paternal grandmother except her name and current address, even though the detention report indicated she reported Indian heritage to the social worker and father identified her as the main source of information about his family. It is hard to imagine why, if she was in contact with the Department, not even her

own date and place of birth appears on the form. Some of the other information on the ICWA-030 form, such as birth dates for some of N.R.'s great-grandparents, suggests that the Department did in fact speak to family members again after the detention stage, but subsequent reports do not mention any further investigation or follow-up on father's claims. The Department must do better. (See *In re A.G.* (2012) 204 Cal.App.4th 1390, 1397 [finding error "obvious" in similar circumstances].)

Accordingly, we conditionally reverse the order terminating parental rights and remand for further inquiry into N.R.'s Indian ancestry.[5] When the investigation is done, the Department must either send notices to the remaining seven Apache tribes or provide the juvenile court with a sufficient factual basis for limiting notice to the Fort Sill Apache Tribe or any other subset of federally recognized Apache tribes. The Department must also send notices to any other federally recognized tribes that it identifies through further investigation. The court shall then determine whether notice requirements have been satisfied and whether N.R. is an Indian child. If the court finds he is an Indian child, it shall conduct a new section 366.26 hearing in compliance with ICWA and state law. If the court finds he is not, the order terminating parental rights will be reinstated.

B. The Juvenile Court Properly Denied Mother's Section 388 Petition.

Mother claims that the juvenile court erred by denying her request for more time to complete her case plan before the section 366.26 hearing was held. We disagree.

1. Additional facts.

In late October 2018, the same day this court issued its opinion denying mother's writ petition, mother filed a section 388 petition seeking to change the July 2018 order terminating her reunification services. She stated that since that order, "[a] writ petition and [o]pposition thereto were filed and pending in the Court of Appeal," and she requested "more time to complete [the] case plan based on substantial recent progress." In support, she attached documentary evidence of her progress in various areas, including

[5] As mother accurately observes, our reversal of the termination of father's parental rights also requires us to reverse the termination of her parental rights. (See *In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1168, fn. 7.)

completing parenting classes, attending mental health and drug treatment programs, and participating in some drug testing. She also stated that the requested change would be in N.R.'s best interest because "[i]t is always better for [a] child to bond and be raised with [a] natural parent."

As mentioned, the section 366.26 hearing was originally set for November 5, 2018. On that date, the juvenile court granted the Department's request for a continuance to permit grandmother to be assessed for placement. The court declined mother's request that a hearing on her section 388 petition be put over to the same date, however, and immediately held an evidentiary hearing. Mother testified that she had been clean and sober for 96 days, was in daily contact with her Narcotics Anonymous sponsor, and was seeing a mental health counselor. She had visits with N.R. three times a week, which were going well. Grandmother, who had attended some of these visits, testified that mother was doing "wonderfully" with N.R. and had become "a whole different person" who "would do anything" for him.

The only evidence offered on the issue whether resuming reunification services would benefit N.R. was testimony that he was attached to mother at visits. When specifically asked why the change in order would be in N.R.'s best interest, mother responded, "Me and [N.R.] are very bonded. I cannot even use the restroom [at visits] without him yelling, mom, mom, and running after me. [¶] He will not let me put him down. He is very attached to me. I'm doing everything that they asked me to do. I don't know what more they want me to do."

After hearing argument, the juvenile court denied the petition. It observed that the only evidence it had was "self-reports" about mother's change in circumstances and her bonding with N.R., and it specifically noted the absence of a bonding study or any "indication [that] if services were reinstated[,] or terminated and the child was given back today[,] she could complete the case plan, if [services] were offered, within a reasonable amount of time, six months. Whether she's almost there, is likely to succeed, I have no idea." The court indicated, however, that if mother could submit additional evidence by

the time of the continued section 366.26 hearing, it was willing to revisit the issue. She did not do so.

2. Discussion.

Under section 388, an interested party may petition the juvenile court to change or set aside a prior order "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1).) The court must hold a hearing on the petition if "it appears that the best interests of the child . . . may be promoted" by the change in order. (§ 388, subd. (d).) "Thus, the [petitioner] must sufficiently allege *both* a change in circumstances or new evidence *and* the promotion of the child's best interests." (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1157.) If, as here, a hearing is held, the petitioner has the burden of proof by a preponderance of the evidence. (Cal. Rules of Court, rule 5.570(h)(1)(D).)

We review the denial of a section 388 petition for an abuse of discretion. (*In re B.D.* (2008) 159 Cal.App.4th 1218, 1228.) " ' " 'The appropriate test for abuse of discretion is whether the [juvenile] court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the [lower] court.' " ' " (*In re J.C.* (2014) 226 Cal.App.4th 503, 525–526.)

Our evaluation of the juvenile court's ruling is guided by the timing of mother's section 388 petition. "Once reunification services are terminated . . . , the focus of the proceedings changes from family reunification to the child's interest in permanence and stability." (*In re G.B., supra*, 227 Cal.App.4th at p. 1163.) This "focus on the child's best interest remains in place . . . [even if] a parent seeks additional services under section 388." (*Ibid.*, italics omitted; *In re Edward H.* (1996) 43 Cal.App.4th 584, 594.) Thus, at the postreunification stage, "a parent's [section 388] petition for . . . an order . . . reopening reunification efforts must establish how such a change will advance the child's need for permanency and stability." (*In re J.C., supra,* 226 Cal.App.4th at p. 527.)

Mother makes no attempt to demonstrate that the juvenile court abused its discretion by denying her section 388 petition. Instead, she insists that she was *not* requesting "reinstatement of reunification services," but rather seeking a continuance of

the section 366.26 hearing "to allow her more time to complete the aspects of her case plan on her own initiative in anticipation of later filing a section 388 petition for return." Though she acknowledges she used a JV-180 form (Request to Change Court Order), she argues that since she did not also seek to vacate the section 366.26 hearing date, the court should have construed the petition as a request for a continuance of that hearing. Thus, she claims, the court abused its discretion because it evaluated her request under an incorrect legal standard. (See *In re A.S.* (2018) 28 Cal.App.5th 131, 144–145.)

Mother's position, while creative, is unsound. After the juvenile court granted the Department's request to continue the section 366.26 hearing, mother's counsel asked that the hearing on the section 388 petition also be continued to the same date. If mother was truly seeking only a continuance of the section 366.26 hearing herself, there is no logical reason she would have sought to have her request considered later, at the newly-rescheduled section 366.26 hearing. Indeed, the parties' arguments and the court's discussion below make clear that everyone understood she was seeking additional reunification services. Thus, the court properly analyzed her request as a section 388 petition, and she fails to demonstrate any abuse of discretion.

C. Mother Is Not Entitled to Relief Based on the Delay in Assessing Grandmother for Placement.

Finally, mother claims that the juvenile court erred by terminating parental rights to N.R. before the Department could assess grandmother for placement. We are not persuaded.

1. Additional facts.

The July 2017 disposition report contains the first suggestion in the record of grandmother's interest in having N.R. placed with her. The report noted that grandmother "has stated that when [mother] gets [N.R.] back she would like for [mother] and the baby [to] move to her home in Florence, Oregon so she can assist [mother] with caring for the child." Grandmother apparently did not request N.R.'s formal placement with her, however, and the January 2018 six-month status review report stated there were

"no relatives to consider for placement due to the locations of the extended family members."

On April 1, 2018, grandmother submitted paperwork to the social worker to be assessed for placement in accordance with the Interstate Compact on the Placement of Children (ICPC), which " 'governs conditions for out-of-state "placement in foster care or as a preliminary to a possible adoption." ' " (*In re Z.K.* (2011) 201 Cal.App.4th 51, 66.) Several months later, the Department submitted its November 2018 section 366.26 report, which reported that N.R. had had three visits with grandmother. The report also included CDSS's adoption assessment, which stated it was "clear that the minor is adoptable" but more time was needed to assess grandmother as a potential adoptive parent and "allow the State of Oregon the time needed to complete the ICPC process." The Department agreed that a continuance was necessary to allow CDSS and Oregon to complete their processes.

As mentioned above, the juvenile court granted the Department's request for a continuance, and the section 366.26 hearing was rescheduled to December 10, 2018. Before the hearing, the Department submitted an addendum report and an updated adoption assessment. The adoption assessment concluded it was in N.R.'s best interest to be adopted by his foster parents, "[b]ased on the length of time that [N.R.] has lived with [them] and the strength of his connection to [them] and his four foster siblings." Although recognizing that "grandmother has expressed a desire to adopt her grandson," the assessment reported that "she [did] not have a completed and approved ICPC adoption assessment." Specifically, the Oregon ICPC representative had "explained that while the federal law calls for these ICPC requests to be completed in 60 days," Oregon would "need an additional three to four months to assess [grandmother's] home." As a result, grandmother was "not an option for placement."

At the rescheduled section 366.26 hearing, the juvenile court heard testimony from grandmother, the social worker, and the social worker's supervisor about the delay in grandmother's ICPC assessment. The social worker testified that although the Department received grandmother's application in early April 2018, it did not send the

paperwork to Oregon until six months later, in October. When asked why it took so long, the worker stated that there were "lots of stages, lots of people it has to go through." Specifically, it took several months to collect the information and other documents needed to complete the paperwork. The social worker's supervisor also testified that "part of the . . . delay" was that grandmother submitted the application around the time reunification services were terminated, so "it was kind of deferred for a[]while."

After hearing argument, the juvenile court determined that grandmother had timely submitted her application, but "[f]or whatever reason Oregon has taken upon itself to not comport with federal law . . . and much to the detriment potentially of the grandparent." Observing that grandmother was "[c]learly . . . entitled to placement of the child," the court decided it was "not going to make that decision today" because "justice and due process requires she have an opportunity to be fully vet[t]ed. And she comported with time lines. . . . [¶] And she should not be punished for the system or agency dropping the ball." It continued a hearing on the placement issue for 90 days but denied mother's request that the section 366.26 hearing also be continued "until Oregon has had . . . time to give us their input."

2. Discussion.

Mother asserts that the juvenile court abused its discretion by not continuing the section 366.26 hearing until the assessment of grandmother as a possible placement was completed. There was no error.

"Section 352 is the primary statute governing continuances in dependency cases." (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 193.) It provides that a continuance may be granted "only upon a showing of good cause and only for that period of time shown to be necessary." (§ 352, subd. (a)(2).) In addition, "a continuance shall not be granted that is contrary to the interest of the minor." (§ 352, subd. (a)(1).) We review the denial of a continuance for an abuse of discretion, which is not shown unless "a decision is arbitrary, capricious[,] or patently absurd and results in a manifest miscarriage of justice." (*In re Karla C.* (2003) 113 Cal.App.4th 166, 180.)

Under section 361.3, a grandparent who requests a child's placement with him or her after the child is removed from a parent's physical custody is entitled to "preferential consideration." (§ 361.3, subds. (a), (c)(2).) " 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) Under the statute, "[t]he preference applies at the disposition hearing and thereafter 'whenever a new placement of the child must be made.' " (*In re M.H.* (2018) 21 Cal.App.5th 1296, 1303.) Some courts have held that the preference also applies after disposition and throughout the reunification period even if no new placement is required. (E.g., *In re Joseph T.* (2008) 163 Cal.App.4th 787, 797–798.) Finally, in a case where the minor's relatives requested placement before the disposition hearing but the agency failed to "timely complete a relative home assessment as required by law," the Fourth District Court of Appeal held that the relative placement preference applies even after reunification services are terminated. (*In re Isabella G.* (2016) 246 Cal.App.4th 708, 712.)

The relative placement preference does not, however, apply at or after a section 366.26 hearing. (*In re Maria Q.* (2018) 28 Cal.App.5th 577, 596.) Specifically, as relevant here, the preference does not "apply to an adoptive placement; there is no relative placement preference for adoption." (*In re A.K.* (2017) 12 Cal.App.5th 492, 498 (*A.K.*).) Rather, a relative or foster parent who "has cared for a dependent child for whom the court has approved a permanent plan for adoption, or has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency . . . determines that the child has substantial emotional ties to the [caregiver] and removal from the [caregiver] would be seriously detrimental to the child's emotional well-being." (§ 366.26, subd. (k); *A.K.*, at p. 498.)

The Department contends that mother lacks standing to seek reversal of the order terminating parental rights on the basis that the termination occurred before grandmother's assessment was complete. "Whether a person has standing to raise a particular issue on appeal depends upon whether the person's rights were injuriously affected by the judgment or order appealed from," and "[a] person does not have standing

to urge errors on appeal that affect only the interests of others." (*A.K.*, *supra*, 12 Cal.App.5th at p. 499.) In particular, "a parent's interest in a dependency proceeding is in *reunifying* with the child," which is distinct from "a relative's 'separate interest' in preferential placement consideration or in having a relationship with the child." (*Ibid.*) Thus, once reunification services have been terminated, a parent generally "does not have standing to raise relative placement issues on appeal." (*Ibid.*)

Here, reunification services have been terminated, and mother has failed to convince us that the juvenile court erred by denying her section 388 petition to receive additional services. She argues that she nevertheless has standing to raise her claim because if her request for a continuance "was granted for assessment and consideration of [grandmother, then] necessarily, parental rights would not have then been terminated." True enough, a continuance would have necessarily *delayed* termination of her parental rights. But the completion of grandmother's assessment and the court's ensuing placement decision, whatever it was, could not advance any argument mother might make as to why her parental rights should not be terminated. (See *In re Isaiah S.* (2016) 5 Cal.App.5th 428, 436.) As a result, mother cannot challenge the court's decision to proceed with the section 366.26 hearing on the basis that grandmother's assessment was still pending.[6]

Resisting this conclusion, mother argues that had N.R. been placed with grandmother, mother could have had "frequent and extensive visitation" with him and the juvenile court could have determined that guardianship instead of adoption was in his best interest. "Although the 'placement of a dependent child with relatives can, under certain circumstances, make the termination of parental rights unnecessary' [citation], those circumstances do not exist in this case" because grandmother sought to adopt N.R.

[6] Mother repeatedly refers to the need to complete "the assessment required by section 361.3," but as discussed the relative placement preference does not apply to an adoptive placement. To the extent mother means to suggest that the order terminating parental rights must be reversed because the Department failed to complete an assessment under section 361.3 earlier in the case, we agree with the Department that the claim is forfeited.

(*In re Isaiah S., supra*, 5 Cal.App.5th at p. 436.) Our record does not indicate that grandmother was interested in a guardianship instead of adoption, and as did the *Isaiah S.* court, we refuse "to speculate whether the maternal relative[] would pursue other options that do not require termination of parental rights if given such an opportunity." (*Ibid.*; see § 366.26, subd. (c)(1)(A) [exception to termination where child is living with relative unwilling or unable to adopt but willing to become legal guardian].)

Mother also claims that the juvenile court erred by terminating parental rights before considering whether to place N.R. with grandmother because "the relative placement preference . . . disappears after termination of parental rights." She argues that this case provides "compelling circumstances to briefly postpone the section 366.26 hearing so that the family could 'acquire the facts necessary to be able to make an adequate showing to obtain a section 388 hearing' for placement with the grandmother 'and ultimately, depending on the facts, to prevail in such a proceeding.' " (Quoting *In re Michael R.* (1992) 5 Cal.App.4th 687, 694.) Mother's reference to "the family" is telling. If anyone was aggrieved because the relative placement preference disappeared when parental rights were terminated at the section 366.26 hearing, it was grandmother, not mother. Thus, mother does not have standing to make this argument. Moreover, grandmother sought to adopt N.R., and as we have said the preference does not apply to adoptive placements. (*A.K., supra*, 12 Cal.App.5th at p. 498.) In short, mother is not entitled to relief based on the denial of her request for a continuance to allow the completion of grandmother's assessment.

III.
DISPOSITION

The order terminating parental rights to N.R. is conditionally reversed, and the case is remanded for further proceedings under ICWA and related state law consistent with this opinion. In all other respects, the order is affirmed.

_____

Humes, P.J.

We concur:

_____

Banke, J.

_____

Sanchez, J.

In re N.R. A156099